

## President's Message

Over the years, our members have come to enjoy reading CAPE's *Professional Dialogue* and to appreciate its quality, professionalism and the useful information it provides on matters of interest to members.

Equally important, this edition of *Professional Dialogue* marks a special period for members, a period in which the Association has been preoccupied with addressing a number of challenges such as the ones mentioned briefly here in the President's Message.



## Current Challenges

### Charter Challenge

As you will read later in this publication, CAPE and the Professional Institute of the Public Service of

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## EC Conversion - Advanced Personal Notifications Have Been Issued

Over the past few weeks most of CAPE's ES and SI members have been provided with information from their departments in regards to the EC conversion process. General information about the process within each department has been posted or circulated. Advance Personal Notification (APN) letters have gone out to persons occupying ES and SI positions as well as to incumbents of ES and SI positions who may temporarily be in other positions. Letters have gone out to ES and SI employees who

are on leave. With the exception of ES and SI employees who are occupying positions that are not going through the EC conversion process, everyone should have a clear idea of the anticipated classification of their position.

### What you should know

Those who are occupying positions that the employer expects to reclassify into other occupational groups (AS, WP, PM, etc.) have been advised. If you have not received an APN letter and if you have not been advised by your department that it intends to reclassify your position into another group, you

should be pressing your supervisor for answers. Reclassification can occur at any time; and it is anticipated by CAPE that EC conversion will occur some time in 2009. You should know *now* what will happen to your position.

The APN letter that most of you have received identifies the anticipated EC level of your position. Your department has applied

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## President's Message, cont'd from page 1

Canada (PIPSC) collaborated on filing a constitutional challenge against the federal government regarding provisions contained in the *Public Service Labour Relations Act* (PSLRA) which prohibit federal employees from negotiating protections and improvements in areas such as pensions, classification and staffing. As I observed at the time the challenge was launched, the federal legislative restrictions have caused serious labour relations problems by preventing federal public service bargaining agents from engaging in meaningful negotiations on issues of fundamental concern to our members - such as staffing, pensions, and the classification structure.

This is a historic moment for federal public service employees. With this Charter Challenge, the Association is putting the employer on notice.

### *EC Conversion*

The EC Conversion exercise affects CAPE members in the ES & SI Groups. It has come a long way and now it appears there is light at the end of the tunnel. After many delays, the employer began issuing the Advanced Personal Notifications (APN) during the mid-summer. As a result, the National Office has been more than unusually busy responding to volumes of questions relating to the Conversion process, its impact on classification and members' jobs. I expect similar enquiries from members when the employer finally sends the Official Personal Notification out to members.

### *EC Collective Bargaining*

Collective Bargaining is progressing - albeit at a slow pace. As is explained more fully later in this edition, the Conversion and the ongoing collective bargaining negotiations are inextricably linked. The EC classification scale is needed in order to negotiate pay. The expectation is that this round may easily extend to the early spring of 2009.

### *TR Collective Bargaining*

The negotiations at this table are slow and progress is not easily quantifiable. Our negotiators have been diligent and are doing everything possible to move things forward. However in order to expedite the process the cooperation of the employer is needed. It is therefore hard to make any predictions on when the negotiations will be completed.

### *Pensions Appeal Case*

After the Ontario Superior Court of Justice denied the Pensions Appeal, the CAPE National Executive Committee decided in January 2008 not to pursue the matter further and informed the members accordingly. At the same time, the National Executive Committee (NEC) acted prudently by filing an appeal on behalf of the Association as a means to protect the legal right to challenge the Court's decision in the event that the NEC decided to appeal.

Meanwhile, given the interest expressed by some members to appeal the Court's decision, two events occurred since NEC's decision. First, the NEC has established a special subcommittee to gather additional information on the pensions

appeal process that could assist the NEC in its decision making. Second a Special General Meeting was called at the request of some members to further discuss the appeal. This meeting made a recommendation to the NEC to reverse its decision and, as a result, the NEC has changed its decision.

This is just another example of how your National Executive Committee is committed to listening and responding to the needs and direction of the membership.

### *Communications Committee's New Policies*

Over the past several months the CAPE Communications Committee undertook several significant projects - the development of a CAPE Recognition and Appreciation Awards Policy, the development of a Promotional Items Policy, and most significant, the development of a completely new CAPE website.

The website improvements will allow the site to be easily navigated, and information will be far more accessible. This project is currently ongoing and we anticipate its final construction to be completed by mid-September of this year.

In addition to the above, the Communications Committee's initiative to introduce electronic-voting for the Association has taken a first step in the process. As you will read more later in this edition of *Professional Dialogue*, a pilot on-line survey has been conducted with our Library of Parliament bargaining group. The lessons learned will al-

**President’s Message,** cont’d from page 2

low the Association to expand the use of the system to survey all members and, ultimately, to conduct e-voting.

Again, these developments are in response to the needs and the demands of the CAPE membership.

**Busy Times for CAPE Committees**

The number of meetings held by

your National Executive Committee has surpassed all previous records. The effort and commitment of your National Executive members has led to a dramatic increase in the frequency of NEC meetings. Sub-committees have also been particularly busy during the past several months – the Finance Committee, the Special Committee on Governance Review, the Equal Opportunities and Diversity Committee, the Young Members Advisory Committee, the

Taskforce on Membership Participation, the Bargaining Committees and Negotiating Teams for the TRs, the EC and the LoP Groups – all working towards the common goals of addressing the needs and concerns of the membership.

I am grateful to all of the participants on these committees and your significant contributions to the Association are very much appreciated. ●

José Aggrey

**EC Conversion,** cont’d from page 1

the EC classification standard to the work description that it anticipates will describe the work of your position on the date of conversion. The anticipated EC level is the result of the application of the standard. It has no actual relationship to the ES or SI level of your position.

For example in theory, the EC classification level of an ES-04 position could be anything from EC-01 to EC-08. It all depends on the results of the application of the EC standard to the specific work description. The same is true of all ES and SI positions that are evaluated with the EC standard. The converse is also true. There will be positions classified at several different levels of the ES and SI standard that will fall on the EC-05 level, for example.

There are however aggregations. In part these aggregations result from similarities between the ES and SI classification standards, and the EC standard.

\* With the SI classification standard the employer recognizes

the value that a SI brings to the work place in terms of: (1) skills and knowledge; (2) problem solving skills; (3) responsibility for contacts; (4) supervision.

\* With the ES standard, the employer recognizes the value that an ES brings to the work place in terms of: (1) the nature and complexity of work; (2) professional responsibilities; (3) supervision and/or coordination; (4) the impact of work; (5) representation.

\* With the EC standard the employer recognizes the value that an EC employee brings the work place in terms of: (1) decision making responsibility; (2) leadership and operational management responsibility; (3) communication skills; (4) knowledge of specialized fields; (5) contextual knowledge (6) research and analysis (7) physical effort; (8) sensory effort; and (9) working conditions.

As many of the factors are similar, it can be expected that there should be some degree of aggregation of ES positions of a same level, for example, into a given EC level.

Moreover, the aggregation has to do with a number of other factors including the point rating delimitation of levels in each standard.

**What you should do**

Here is the table of correspondence that has been provided by most departments to their employees regarding the conversion:

Level 1	ES-01/SI-01	EC-01
Level 2	ES-02/SI-02	EC-02
Level 3	— /SI-03	EC-03
Level 4	ES-03/SI-04	EC-04
Level 5	ES-04/SI-05	EC-05
Level 6	ES-05/SI-06	EC-06
Level 7	ES-06/SI-07	EC-07
Level 8	ES-07/SI-08	EC-08

If you have been advised that your anticipated EC level is below your current ES or SI level as illustrated in the table, you should immediately speak to your supervisor. You may likely find yourself in a salary protected situation if adjustment to your work description and/or EC classification cannot be

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## EC Conversion, cont'd from page 3

made before the conversion [electronic link]. You may not be satisfied with a salary protected situation. More information regarding salary protection can be found in the Treasury Board Policy on Reclassification/Conversion, at:

[http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/TBM\\_11A/rec1\\_e.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/TBM_11A/rec1_e.asp)

**CAPE local officials, in spite of the the fact that they often represent only a very small portion of employees working in a department, are taken very seriously and play a disproportionately important role in consultations with management.**

(Should it arise that a position is classified into an EC level in which the maximum salary of the position is less than the maximum salary of the original ES/SI position before conversion, the member will be salary protected. This means that the salary will remain at the higher level, as though the position were not reclassified to a lower level. The salary remains at the original level for as long as the employee stays in the position. The member continues to move along the increment line until the member's salary reaches the maximum. The member also receives all of the annual pay adjustments of his or her former level.)

You have between now and some time early in 2009 when you will receive the Official Personal Notification (OPN) in order to address problems informally with your management. Do it now. After the OPN, if outstanding issues continue to concern you, you will have a short period of time to decide whether to file grievances.

Departments will not necessarily be providing the point ratings of positions with the APN. They will be providing the point ratings with the OPN. If this information is not included, members can use article 34.01 of the collective agreement at that time, as the EC work description comes into effect at the OPN. (34.01 Upon written request, an employee shall be provided with a complete and current statement of the duties and responsibilities of his or her position, including the classification level and, where applicable, the point rating allotted by factor to his or her position, and an organization chart depicting the position's place in the organization.)

### A Nod to our Local Leadership

As the EC conversion process has unfolded over the past several months, we have seen that, in those departments where CAPE has active locals, for the most part the process has gone more smoothly than elsewhere. Where a local is active and present in various forums of consultation, management develops the reflex of communicating with local officials and acting in a transparent and cooperative manner. It appears that management discovers that a

productive dialogue with local bargaining agent representatives has its advantages - particularly when local officials are known to be supported by a team of professionals that advocate on their behalf. CAPE local officials, in spite of the the fact that they often represent only a very small portion of employees working in a department, are taken very seriously and play a disproportionately important role in consultations with management.

### The EC Conversion Database and Collective Bargaining

We did not receive the EC conversion database until long past the beginning of the bargaining process. The collective agreement expired in June 2007. The database arrived in late March 2008. After CAPE's initial analysis of the database, it requested and received a series of work descriptions in May 2008. Analysing the database, preparing pay scale scenarios, integrating the conversion arguments into other pay arguments, have meant that the current round of EC collective bargaining has not advanced as quickly as we had hoped. Both parties must have a clear idea of where ES and SI members of CAPE will fall along the EC classification scale in order to negotiate pay. Both parties need to know where they are going with their respective positions on pay before they begin bargaining matters that have a financial impact - the various forms of leave, for example. We anticipate bargaining until late 2008. ●

## The Bilingualism Bonus

*There are two conditions that must be met in order for a federal public service employee to become eligible for the bilingualism bonus. Firstly, the employee must occupy a position which has been identified bilingual by his or her organization. Secondly, the employee must have Second Language Evaluation (SLE) results confirming that he or she meets the language requirements of his or her position.*

### Bilingual Positions

Once the official languages obligations of a position are determined according to the Official Languages Act, a department establishes the language requirements to meet these obligations. A position could be identified as (1) bilingual, when the functions must be carried out in English and in French; (2) English essential, when the functions must be carried out in English; (3) French essential, when the functions must be carried out in French; (4) Either/or, when the functions may be carried out in English or in French, in accordance with the employee’s choice.

***TR employees translate, interpret and carry out terminology work. Their positions are bilingual but they do not receive the bilingual bonus.***

As with any other qualification, second official language qualifications must be relevant to the duties and responsibilities of the position.

They should be determined objectively by departments. They should reflect the duties of employees as well as obligations with respect to service to the public. In regions designated as bilingual for language-of-work purposes, the employer must make sure that employees occupying bilingual or “either/or” positions are supervised in their preferred official language. All other employees are supervised in the official language of their position.

The language requirements of positions in the federal public service are represented by a series of letters and/or dashes. Standards of general proficiency are defined for each skill according to the tasks that employees are required to accomplish in their second official language. For most positions, the levels are ordered from A (lowest) to C (highest), and are cumulative: an employee functioning at Level B can accomplish tasks at Levels A and B, and an employee functioning at Level C can accomplish tasks at all three levels. When a skill (or skills) is not required, a dash (“-”) is used in the linguistic profile instead of a proficiency level. For example, “A, -, B” would represent the language requirements of a position where there is a minimal require-

ment to read in the second official language, no requirement to write in the second language and a higher than minimal requirement to interact orally in the other language.

Exceptionally a bilingual position may have different profiles for English and French. This will occur in the very exceptional circumstances where some duties are not carried out with the same level of proficiency in the other language. A position could have a profile of “C, -, A” in English and “C,C,C” in French where the position would require reading and understanding texts in both French and English, but writing only in French and interacting orally at a higher level of proficiency in French than in English.

### Code P

Code P is used in the linguistic profile for two types of specific language qualifications. These are (1) language-related skills normally acquired through specialized training (including proofreading texts; writing, revising, and/or editing texts; translation; and interpretation) and (2) specialized or

expert proficiency in one or both official languages (for example, as used in teaching English or French).

***Both the economist and the translator may be required to use a second official language in order to communicate with clients or colleagues or subordinates - in such instances, they must be treated the same.***

A “P” in the linguistic profile indicates which language (English and/or French) and which general language skills (reading, writing, and/or oral interaction) are used in performing the specific skill or proficiency. While code P is used only to indicate qualifications for bilingual positions, it may or may not refer to a second language requirement. If, for example, a job requirement is to provide an editing service for texts written in French, code P would be specified for reading and writing skills in French. Code P would then represent a first language requirement for candidates whose first official

language is French, and a second language requirement for candidates whose first official language is English.

When used, a code P supersedes any general second official language qualification. It is thus used instead of any general proficiency level (A, B, or C) that might otherwise have been specified in the profile. As well, second language tests prescribed by the Public Service Commission are not used to evaluate code P qualifications.

With regard to the use of Code P, a task analysis of the position must support any exception to the rule by which the language skills required in the second official language do not differ from one official language to the other. For example, for translation of texts from English to French and vice versa, the profile should require Code P for written comprehension and written expression for English and French. For oral interaction, level B or C in both languages should be indicated for interaction between translators and clients. This does not necessarily exclude the use of Code P for oral interaction, but it must be justified by the task analysis. If the translation is solely from one language to the other, Code P would be required for both languages in terms of written comprehension but for only one language (the target language) in terms of written expres-

sion. The same factors apply to oral interaction as in the above example.

## **The Bilingualism Bonus Directive of the NJC**

The National Joint Council’s Bilingualism Bonus Directive sets out the eligibility conditions for the bilingualism bonus in the federal public service. As noted earlier, there are two conditions: (1) that the employee occupies a position that is designated bilingual by the employer; (2) that the employee has SLE results confirming that he or she meets the language requirements of the position.

There are eight exceptional circumstances identified by the directive where employees who meet the two above stated conditions would still not be eligible for the bilingualism bonus. Of these eight conditions one is of a particular importance to CAPE as it applies to the Translation group. The Directive reads in part:

- 1.1.2 The bilingualism bonus shall not be payable to the following:
  - (a) Employees in the Translation Group, unless their positions are identified bilingual for reasons other than translation;

Thus as a rule translators, interpreters and terminologists in the federal public service do not receive the bilingualism bonus. However,

*Bilingualism Bonus, cont'd from p.6*

the exception to the general conditions of eligibility is itself conditional: a TR employee does not get the bilingualism bonus only if her or his position is not identified as bilingual for other reasons than translation. For example, if a TR supervises staff and is required to communicate management directives to staff in both official languages, then the position would be identified by the employer as bilingual. If a TR were required to communicate with internal or external clients on matters regarding the management of files or contracts, then again the TR's position would be identified by management as bilingual and the TR would receive the bilingualism bonus.

The point to be made here is that TR employees translate, interpret and carry out terminology work. For these responsibilities they are expected to meet a P code. Their positions are bilingual but they do not receive the bilingualism

bonus. If they are required to carry out other duties in both official languages, their positions are not only designated bilingual by the employer; they are also in receipt of the bilingualism bonus.

The purpose of the “exception” to the “exception” that allows TR employees to be eligible for the bilingualism bonus is to ensure that all federal public service employees are treated equal. It is understood that members of the TR group bring to the work place their language skills in the same manner that economists bring to the work place knowledge of economic theories and of research methodology. How-

ever both the economist and the translator may be required to use a second official language in order to communicate with clients or colleagues or subordinates on matters that are about economic theory or about translation. In such instances, they must be treated the same. ●

## Online Survey at the Library of Parliament

*In the past, a few months prior to the expiry of a collective agreement, CAPE members covered by the agreement in question received a survey in the mail requesting their input on their priorities for the next round of bargaining. Once they completed the survey, members were asked to return the questionnaire to the CAPE national office in postage paid envelopes. The survey data would be inputted manually and analyzed using SPSS (Statistical Package for the Social Sciences) software. Answers to open-ended questions had to be inputted manually. It became apparent that the time had come for a more efficient and less time and resource consuming system of data collection and analysis.*

In 2007, after a review of online survey providers, the Association subscribed to a Canadian company, InSite Survey Systems. It was decided that CAPE members at the Library of Parliament (LoP) would be the first group to test the new survey system. It was also decided that the LoP bargaining survey was going to be a pilot project - this meant that we needed to make sure that every step of the process could be replicated with the EC and TR members in the federal public service. It also meant that we needed to keep in mind whether we could use the same process for surveys and for online voting (i.e. for Association elections).

### Lessons learned

#### *The process had to be replicable*

The ability to replicate the process for the collective bargaining questionnaire for EC and TR membership or for online voting presented several challenges. As an example, although the Library of Parliament had granted us permission to use their e-mail system to conduct the survey, we decided against going this route as it would not be a feasible one for the federal public service. Not only do we not have all of the e-mail addresses of our EC and TR members at their workplace, we would need to obtain permission from each individual department or organization in order to obtain access to their e-mail system to conduct what we consider to be “confidential union business” - during their employees’ working hours.

*To allow us to implement the technology available, and profit from its many benefits, we need your assistance in keeping our contact information up-to-date.*

#### *Invitation to participate*

Members currently provide us with their home e-mail addresses on a voluntary basis, but our list is far from complete or up-to-date. This presented us with another problem - we must make every possible effort to ensure that *every* member of CAPE has the opportunity to provide input into the bargaining process and is able to vote when the occasion arises. To address this problem, a written invitation to participate in the survey was extended to all members of the bar-

**LoP Survey**, cont'd from p.8

gaining unit. While not ideal, this process was much less costly in terms of print - a single sheet of paper in a number 10 envelope, as opposed to a much more costly printed survey, with higher postage costs.

**Security**

Although it was not as critical for surveys, if we were to use the same system for online voting we needed to make sure that someone could not tamper with the system by voting more than once or by using someone else's personal information (e.g. name) to access the system. We decided to assign a personal identification code at random for each of the names in our LoP membership database. Members would simply enter their names and personal identification code to access the survey. What we did not realize until the survey was underway, was the fact that our membership database does not recognize French accents. As a result, the survey system rejected the names of Francophone members who typed in their names with French accents. (Once this problem was identified, members were asked to input their names without the French characters.) Our membership list is updated electronically on a monthly basis using a list provided by the Employer (Treasury Board or the LoP) - a list that does not contain French characters. We

will be approaching each Employer to rectify this problem, asking them to provide us with electronic lists that contain the accurate characters of each members' name.

**Evaluation**

The response rate to the survey was 32%, which is comparable to previous mail-in surveys. The deadline for responses was on a Friday and the following Monday, a complete report of survey responses in French and English was available on a secure area of the InSite website. Data entry and analysis would have taken considerably longer.

This is certainly the route to go for future surveys.

**On-Line Voting?**

Successfully completing the LoP collective bargaining survey online was a long awaited and gratifying accomplishment. The battle plan was laid for the upcoming CAPE elections, and resolutions ballots, in the fall of 2008. We had, however, put the cart before the horse.

According to the CAPE Constitution,

27.2 All voting shall be by a mail-in ballot or other similar means, as specified in the By-Laws.

And according to the CAPE By-Laws,

B 3.11 The vote shall be cast using the system of "double envelopes". Only envelopes with a ballot inserted in an internal envelope and accompanied in the external envelope with a completed voter registration card signed by the voting member certifying his or her membership status shall be accepted. Any other envelope shall be considered a rejected envelope.

In brief, CAPE's Constitution and By-Laws make no allowance for online voting. A situation that is easily rectified, by modifying both. However this will not be accomplished prior to the upcoming elections and resolutions votes.

*Please take the time to visit our website and provide us with your home e-mail address. If you have already done so, please ensure that the e-mail address that we have for you is up-to-date.*

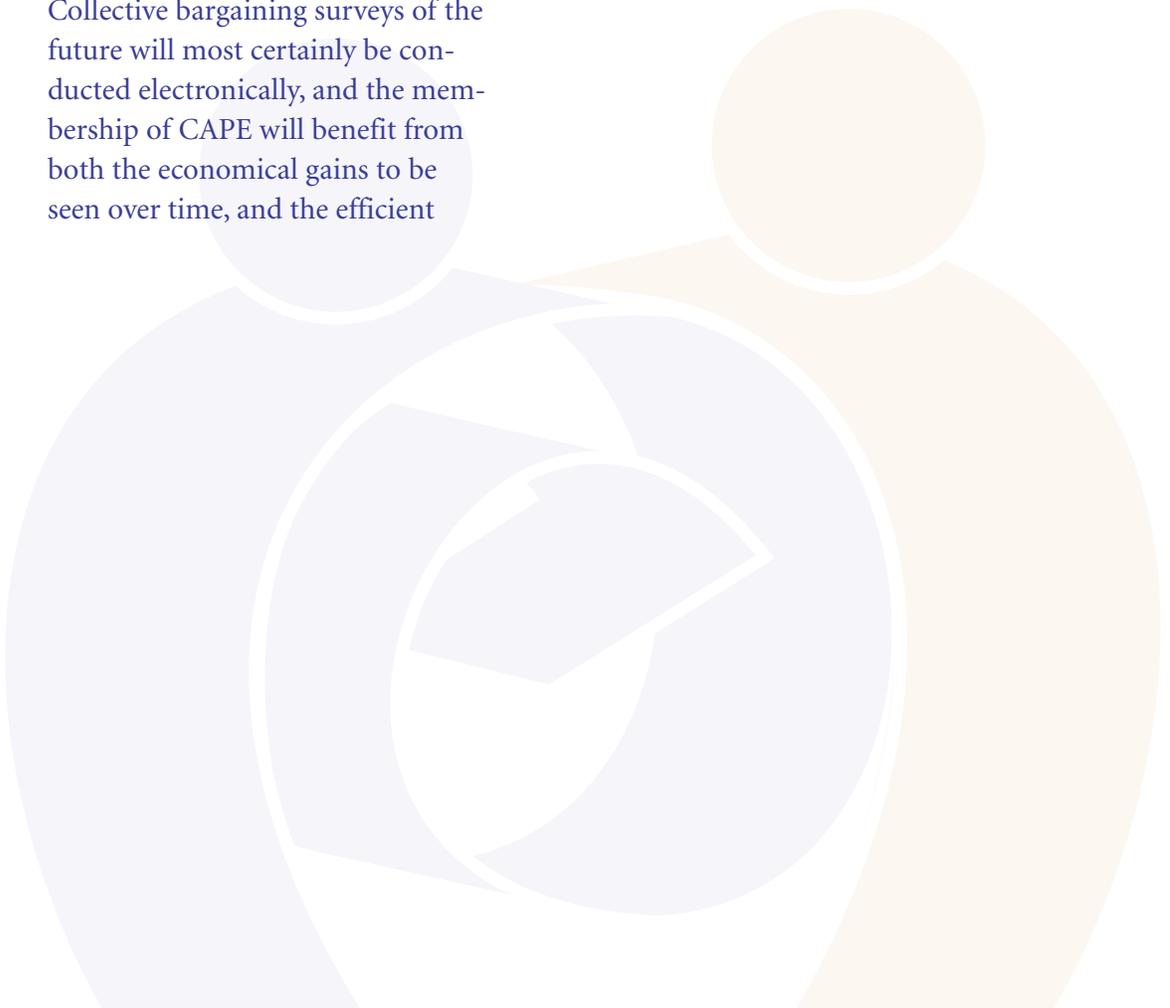
Our enthusiasm and appreciation of the online voting system is not diminished by this, however. Collective bargaining surveys of the future will most certainly be conducted electronically, and the membership of CAPE will benefit from both the economical gains to be seen over time, and the efficient

data entry and analysis will prove to be an important asset to CAPE's bargaining teams.

### **We need your home e-mail address!**

As stated earlier in this article, members currently provide us with their home e-mail addresses on a voluntary basis, but our list is far from complete or up-to-date. To allow us to implement the technology available, and profit from its many benefits, we need your assistance in keeping our contact information up-to-date.

Please take the time to visit our website and provide us with your home e-mail address. If you have already done so, please ensure that the e-mail address that we have for you is up-to-date. Please take note that CAPE does not disseminate any private information about our members without your individual consent. ●



## The Constitutional Challenge - What it Means

On May 5, CAPE announced that the Association, in collaboration with the Professional Institute of the Public Service, was launching a constitutional challenge regarding provisions contained in the Public Service Labour Relations Act (PSLRA) which prohibit federal employees from negotiating protections and improvements in areas such as pensions, classification and staffing.

In a related press release, CAPE President José Aggrey stated “The federal legislative restrictions have caused serious labour relations problems by preventing meaningful negotiations on issues of fundamental concern to our members - such as staffing, pensions, and the classification structure. This is a historic moment for federal public service employees. With this Charter challenge, the Association is putting the employer on notice.”

Historically, federal public sector employees have strongly opposed restrictions on their ability to bargain over pensions, classifications and staffing. The two sister unions decided that this was the appropriate time to take such an action, as each had been advised at various collective bargaining tables, in no uncertain terms, that these issues could not be negotiated. This, despite a recent ruling of the Supreme Court of Canada in the BC Health Services case, wherein the Court recognized that the right to collective bargaining is constitutionally protected by the freedom of association guarantee - as a result, restrictions imposed on collective bargaining by the employer violate

the guarantee of freedom of association contained in the *Canadian Charter of Rights and Freedoms*.

**Of particular interest in this challenge is the fact that the scope of the federal limitations contrasts sharply with the typical situation in most of the public sector and in the private sector**

At issue are provisions in the *Public Service Labour Relations Act* that restrict the scope of bargaining in the federal public service. It is our position that several sections of the PSLRA directly infringe on collective bargaining, by prohibiting any issues concerning the organization of the federal public service, the assignment of duties and the establishment of classifications. As it is now, these are subject to unilateral employer determination.

The challenge relies upon the

guarantee of freedom of association contained in section 2(d) of the Charter as interpreted by the Supreme Court of Canada in the BC Health Services case. The Supreme Court of Canada overturned its previous decisions and for the first time, held that freedom of association protected the process of collective bargaining. The Court concluded that the constitutional right to collective bargaining concerns the protection of the ability of workers to engage in associational activities - in specific terms:

- \* Employees have the right to act in common to reach shared goals related to workplace issues and terms of employment, to present demands to employers collectively and to engage in discussions in an attempt to achieve workplace-related goals;
- \* government employers have a corresponding duty to agree to meet and discuss employee demands; and

*Constitutional Challenge*, from p.11

- \* limits are placed on governments' ability to exercise legislative powers in respect of the right to collective bargaining.

It is our position that the legislative restrictions at issue interfere with our members' ability to engage in protected associational activity and that the government has substantially interfered with and limited our members' ability to engage in collective bargaining by enacting these limitations.

If successful, certain provisions of the federal *Public Service Labour Relations Act* would be invalidated, allowing significant workplace issues such as pensions, classification and staffing to be included in the collective bargaining process, including the arbitration process.

*Historically, federal public sector employees have strongly opposed restrictions on their ability to bargain over pensions, classifications and staffing.*

Of particular interest in this challenge is the fact that the scope of the federal limitations contrasts sharply with the typical situation in most of the public sector and in the private sector, where matters of this nature are resolved in a single collective agreement.

The unions are represented in this legal action by Steven Barrett of Sack Goldblatt Mitchell LLP, who also acted as counsel for the Canadian Labour Congress in the B.C. Health Services case, where the Court first recognized a constitutional right to bargain collectively. ●

## Treasury Board Maternity Leave Policy for Term Workers Deemed Discriminatory by Canadian Human Rights Commission

*A term employee was awarded \$43,000 in damages, salary and interest after the Canadian Human Rights Commission held that the Treasury Board of Canada’s Term Employment Policy discriminates against women. In its decision, the tribunal found that the government’s policy discriminated against the complainant when she was not allowed to count all of her year-long maternity leave toward her three years of continuous employment. According to the Term Employment Policy, the three years of continuous employment are required to convert a term job into a permanent position. Under the Term Employment Policy, employees who work in the same department for three years must be given permanent jobs.*

Until 2003, term employees had to work in the same department for five consecutive years before being appointed an indeterminate employee. And, until 2003, maternity leave and parental leave counted toward the requirement. In 2003 Treasury Board changed this policy, so that a term employee need work in the same department for only three years before being appointed an indeterminate employee. But maternity leave and parental leave no longer counted toward the requirement.

The Tribunal ordered Treasury Board to count the maternity leave period towards the employee’s continuous employment, as well as ordering them to eliminate the discriminatory aspects of the policy.

The employee, a member of the

Professional Institute of of the Public Service of Canada, was represented by Sack Goldblatt and Mitchell, the same legal firm representing CAPE and PIPSC in our recent Charter challenge.

Several similar complaints to the Canadian Human Rights Commission had been held in abeyance pending the decision in this case. At the time of the writing the government had yet to file an appeal of the decision.

The decision, in French only, can be found on the Canadian Human Rights Commission at: [http://www.chrc-ccdpc.ca/whats\\_new/default-en.asp?id=481&content\\_type=2](http://www.chrc-ccdpc.ca/whats_new/default-en.asp?id=481&content_type=2). ●

***The Tribunal ordered Treasury Board to count the maternity leave period towards the term employee’s continuous employment.***



## Severance Pay During Retroactive Period

*You asked: “Once new rates of pay are negotiated and a new collective agreement ratified, does the calculation of severance pay take into consideration a promotion received during the retroactive period?”*

**YES.** The rates of pay resulting from promotions, transfers, deployments or acting situations which took place during the retroactive period of a new collective agreement will be recalculated based on the revised rates of pay following the signing of the collective agreement. The retroactive period commences on the date that the old salaries expired - the 19<sup>th</sup> of April 2007 for the TR group, and June 22 2007 for the EC group, and ends on the day before the collective agreement is signed, or an arbitral award is rendered.

Once employees have a new collective agreement, they are entitled to the better of a recalculation of the rate of pay during the retroactive period, and the straight down revision of the rates of pay. If the recalculated rate of pay is less than the rate of pay the employee was previously receiving, the revised rate of pay will be the rate, which is nearest to, but not less than the rate of pay being received prior to the revision. However, where the recalculated rate is at a lower step in the range, the new rate shall be the rate of pay shown immediately below the rate of pay being received prior to the revision (i.e straight down revision).

The “better of a recalculation” was the result of a complaint filed in 2001 by SSEA and CUPTE alleging discrimination against their members when implementing retro-

active rates of pay. While the represented employees of these two bargaining units had their rates of pay revised using the straight down rule, the retroactive rates of pay for excluded and unrepresented employees were implemented by applying the straight down or better treatment. In November 2002, the Public Service Staff Relations Board (PSSRB) upheld the complaints and ordered the Employer to revise retroactive rates of pay for these represented employees in the same manner as for excluded and unrepresented employees. The Court of Appeal subsequently overturned this decision, but the Employer decided that it would be in everyone’s interest to use the “better of the two calculations” approach. This approach was subsequently negotiated into the EC and TR collective agreements.

On a related note, all salary-related benefits (e.g., overtime) will also be recalculated once an agreement is signed, based on the revised rates of pay.

*Will severance pay be recalculated based on the new rates of pay? This may affect my decision regarding my retirement date.*

**YES.** During the period that your collective agreement is being nego-

tiated, the employer bases its calculations of severance pay on the existing rates of pay. The money you receive is understood to be based on rates of pay that will be revised. Consequently, the calculation of your severance pay will need to be revisited once a new collective agreement is signed and new rates of pay are implemented.

This recalculation will not, however, be effected by any changes made to articles in the collective agreement relating to severance pay.

For example, if CAPE negotiates an increase in the maximum years of service for the calculation of severance pay, this increase will come into effect only at the date of signing of the collective agreement. As a result, employees who left the federal public service after the expiration of their contract will see their severance pay recalculated based on the new pay scales, but subject to the clauses pertaining to severance pay calculation as they existed at the time of the employee’s retirement. ●

## Increased opportunities for deployment to the core public administration

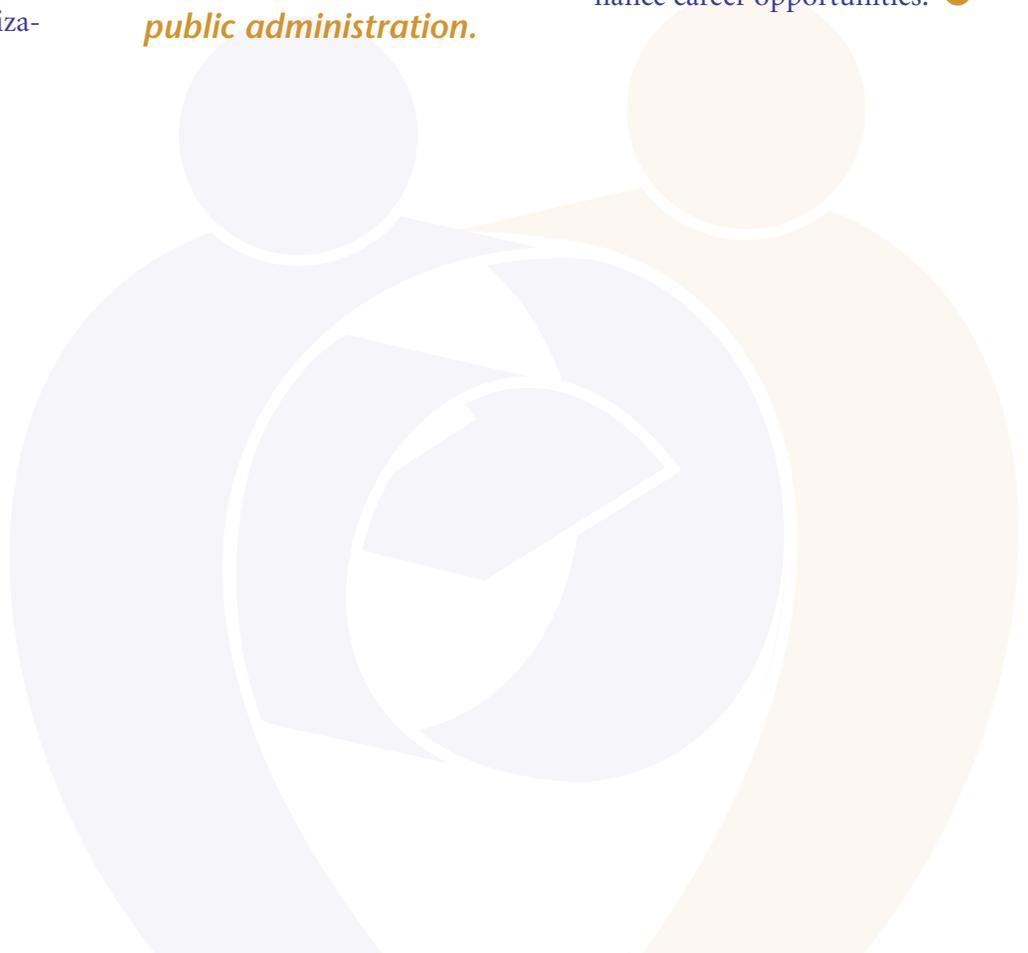
*In May, 2008, the Public Service Commission (PSC) announced that employees of the Canadian Food Inspection Agency (CFIA) may now be deployed to organizations in the core public administration.*

The Public Service Employment Act (PSEA) contains a provision that is designed to enhance access to jobs and allow greater movement between organizations that are subject to the PSEA and separate agencies that are not subject to the Act. The PSC can review the organization's staffing program, at the request of a separate agency, and may enter into an agreement that allows the deployment of employees to organizations subject to the PSEA.

*In February 2008, the PSC approved a request made by the CFIA and agreed to permit the deployment of CFIA employees to positions in the core public administration.*

In February 2008, the PSC approved a request made by the CFIA and agreed to permit the deployment of CFIA employees to positions in the core public administration. The Letter of Understanding signed between the CFIA and the PSC indicated that the CFIA would agree to periodic monitoring of its staffing program by the PSC.

Employees of CFIA have been eligible to participate in appointment processes open to public servants. The new eligibility of CFIA employees for deployment to organizations subject to the PSEA will serve to increase their career mobility, and enhance career opportunities. ●



## Canadian Association of Professional Employees National Executive Committee

Minutes of all CAPE committee meetings can be found on the CAPE website at [www.acep-cape.ca](http://www.acep-cape.ca)

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